

REMARKS

Pending Claims

Claims 9-10, 13, 15-16, 19, and 21-22 are pending. Claim 20 has been canceled without prejudice or disclaimer. Claims 9, 15, 21 and 22 have been amended. No new matter has been added.

Restriction

The office action stated that newly submitted claims 20-22 are directed to an independent invention that is distinct from the alleged invention originally claimed and that claims 20-22 are therefore withdrawn from consideration as being directed to a non-elected invention.

As pointed out in the Examiner Initiated Interview Summary of an interview on December 28, 2009, the Examiner faxed applicant a proposed Examiner's amendment in which claim 20 was proposed to be canceled and claims 21 and 22 amended to depend from claim 9. By this amendment the applicant has canceled claim 20 and amended claims 21 and 22 to be dependent from claim 9. Accordingly, it is submitted that the restriction requirement be withdrawn and that amended claims 21 and 22 be considered.

Specification

The Specification is objected to for failing to provide proper antecedent basis for the claimed subject matter. The claims have been amended to overcome the objection.

Accordingly, the objection should be withdrawn.

Claim Rejections Under 35 U.S.C. §112

Claims 9-10, 13, 15-16 and 19 are rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for an optical detector, does not reasonably provide enablement for the broader limitation of an analyzed analyzing means.

The claims have now been amended in accordance with the suggestion of the Examiner and it is believed that the claims meet all the requirements of 35 U.S.C. § 112, first paragraph. This rejection should therefore be withdrawn.

Claim Rejections Under 35 U.S.C. §102

Claims 9-10, 13, 15-16 and 19 are rejected under 35 U.S.C. §102(b) as being anticipated by Buhler et al, U.S. Patent No. 5,762,872.

Patentability of the Claims

Following an Examiner initiated interview on December 28, 2009, the Examiner faxed applicant a proposed Examiner's Amendment to overcome all known prior art.

Serial No. 10/780,743
Amendment
Responsive to Office Action dated January 5, 2010

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Applicant, however, was not able to provide a timely response to the proposed Examiner's Amendment and the Office Action of January 5, 2010 issued.

Applicant's undersigned attorney forwarded the proposed Examiner's Amendment to the Applicant for approval and after a review of the Examiner's Amendment, the Applicant approved it's filing.

This Amendment incorporates the suggestions made by the Examiner in the proposed Examiner's Amendment and therefore it is believed that the application is now in condition for allowance. If the Examiner has any further questions or comments he is respectfully requested to contact Applicant's undersigned attorney or Gene W. Stockman, another attorney for Applicant who is authorized to take action in the application.

Conclusion

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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